Supreme Court, U.S.
FILED
MAR 7 1990
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 89-1273

In The Supreme Court of the United States

OCTOBER TERM, 1989

INTERNATIONAL LOGISTICS GROUP, LTD.,
Petitioner,

v.

CHRYSLER CORPORATION,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT CHRYSLER CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether this Court should review the lower court decision affirming the dismissal of Sherman Act Section 1 claims on the grounds that the plaintiff failed to prove a "contract, combination or conspiracy" and failed to prove a relevant antitrust market where the appellate court's ruling is not in conflict with any decision of this Court or any other court of appeals, the issue lacks importance to anyone other than petitioner, and modification of the lower courts' rulings on the issues raised would not alter the result reached below.

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BRIEF OF RESPONDENT CHRYSLER CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Chrysler Corporation ("Chrysler") opposes the Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit submitted by International Logistics Group, Ltd. ("ILG"). Having failed at trial to prove either an agreement that violated the Sherman Act or a market in which trade was restrained, ILG seeks a change in the law regarding vertical non-price restraints carefully developed by the Court over the last thirteen years. *See Business Elec. Corp. v. Sharp Elec. Corp.*, 485 U.S. 717 (1988); *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977).

ILG's petition is fatally flawed because it has presented no special or important reasons for the granting of the writ. It has identified no actual conflict among the courts of appeals, no decision of this Court with which the Sixth Circuit's opinion conflicts, and no issue

of jurisprudential importance that this Court needs to correct or to clarify. In addition, ILG has failed to raise any issue of importance, and has failed to establish that a different ruling on the issues it raises would warrant a different result. Accordingly, ILG's petition should be denied.

OPINIONS BELOW

Chrysler is satisfied with ILG's presentation of the opinions below.

JURISDICTION

Chrysler is satisfied with ILG's presentation regarding the jurisdiction of this Court.

STATUTORY PROVISION INVOLVED

Chrysler is satisfied with ILG's presentation of the statutory provision involved.

COUNTERSTATEMENT OF THE CASE

This case involves Chrysler's unilateral refusal to sell automotive replacement parts to petitioner ILG, a customer that was caught violating the vertical non-price restrictions of Chrysler's parts export program. Those restrictions required that customers purchasing parts from Chrysler at its reduced export prices sell those parts outside the United States. The export program, part of Chrysler's overall parts marketing plan, was designed to insure an adequate supply of replacement parts to Chrysler vehicle owners located outside the United States. The lower export prices (as compared to Chrysler's higher domestic prices) both compensated distributors for the added expense of doing business

overseas and reflected market conditions in foreign countries.[1] As a condition of participating in Chrysler's export program, and paying the lower export prices, a distributor was required to agree to sell parts obtained from this program only to purchasers overseas.

In contravention of this provision of Chrysler's export program, ILG had carved an illegitimate niche for itself in the automotive parts aftermarket by buying parts from the export program at the reduced prices and reselling them at higher prices to the United States government and to domestic Chrysler dealers, who were not authorized customers for those parts. When ILG refused to cease its free-riding behavior, Chrysler, without input from or discussion with any third party, decided to stop selling parts to ILG.

ILG then commenced this action, asserting a variety of antitrust claims, including one that Chrysler's refusal to sell it parts constituted a conspiracy to restrain trade in "the sale of parts suitable for use in Chrysler vehicles to the United States government." App. B-1 at 1.[2] The averred "market" of all parts suitable

[1]Export customers generally bought Chrysler parts in bulk without warranty and incurred all costs of warehousing, shipment and distribution overseas. Parts sold at the higher domestic price carried Chrysler's warranty.

[2]In an attempt to exaggerate the importance of the issues presented by its unsuccessful lawsuit, ILG, in its Petition, described its antitrust claims as "charging respondent Chrysler with restraining trade in the sale of parts to the United States government in violation of Section 1 of the Sherman Act." (Pet. at 2 n.1). The market alleged but not proven below concerned only parts which could be used in Chrysler vehicles, a significantly smaller aspect of the government's purchasing needs. Assuming the relevance of that smaller market, given the many alternative parts sources available, Chrysler had no ability to affect government procurement practices even as to replacement parts for Chrysler vehicles.

for use in Chrysler vehicles and sold to the United States government encompasses parts manufactured and marketed by a multitude of entities. Approximately 2400 manufacturers produce parts that are suitable for use in Chrysler vehicles and another 30,000 companies are involved in getting those parts to market. While Chrysler did refuse to sell its own parts to ILG as a direct result of its unwillingness to abide by Chrysler's distribution policies, that decision was made by Chrysler acting alone. More importantly, ILG and many other companies continue to make sales to the federal government of parts suitable for use in Chrysler vehicles obtained from sources other than Chrysler.[3]

ARGUMENT

Contrary to ILG's assertions, this case does not raise any issues warranting review by this Court. Although ILG claims that its failure to prevail on its Section 1 claim evidences widespread confusion on the part of the lower federal courts regarding the necessary elements of a cause of action under Section 1, a review of the district and appellate court opinions in this case reveals that they are in total accord with this Court's Section 1 jurisprudence. The lower courts correctly held that no conspiracy is formed by a manufacturer's unilateral enforcement of its non-price restrictions, and that an antitrust plaintiff cannot show restrictions to be unreasonable without defining a relevant market in which competition was adversely affected.

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[3]A number of ILG's government bid proposals produced at trial show that ILG bid to supply the government with Chrysler parts long after its termination by Chrysler.

ILG also claims that Chrysler's enforcement of its vertical non-price restriction, prohibiting a Chrysler export distributor from reselling parts purchased from Chrysler's export division to the United States government, raises a significant issue of national importance that this Court should review. Although ILG massively exaggerates in an effort to hold Chrysler's distribution policies responsible for what it characterizes as "military defense spending [which] has been grossly inflated and procurement practices [which have been] notoriously abused", Pet. at 11, ILG has not, and cannot, cite to any evidence in the record or otherwise that links Chrysler's policies with defense spending overruns or improper procurement activities. Instead, the record reflects that, after its termination by Chrysler, ILG continued to bid on and to win government contracts to supply parts suitable for use in Chrysler vehicles, relying on sources other than Chrysler for the parts. Thus, this case does not concern the elimination of even a single supplier of government parts in the market alleged by ILG.

Finally, ILG claims that the Sixth Circuit's "heav[y]" "rel[iance]" on the Department of Justice Vertical Restraint Guidelines "repudiated" by Congress requires review by this Court. Pet. at 25. The Sixth Circuit opinion, however, while citing the guidelines, does not depend on them for support.[4] Moreover, the guidelines have been neither rejected by this Court

[4]Those aspects of the Sixth Circuit's opinion referring to the Vertical Restraints Guidelines are fully supported by this Court's decisions in *Business Elec. Corp. v. Sharp Elec. Co.*, 485 U.S. 717 (1988), and *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984). *See* App. A at 3, 5.

nor withdrawn by the Department of Justice. Accordingly, their citation in the Sixth Circuit opinion is neither dispositive nor controversial and does not warrant review by this Court.[5]

I. REVIEW OF THE LOWER COURTS' DECISIONS IS NOT WARRANTED BECAUSE THOSE DECISIONS ARE IN ACCORD WITH PRIOR DECISIONS OF THIS COURT AND OF ALL OTHER COURTS OF APPEALS.

A. The Lower Courts' Holdings That The "Coerced Conspiracy" Theory Does Not Apply To Cases Involving Vertical Non-price Restraints Did Not Create a Conflict With The Opinions Of This Court or Other Appellate Courts.

In considering whether ILG had carried its burden to demonstrate a "contract, combination or conspiracy" under Section 1, the trial court found no evidence of an agreement between Chrysler and other Chrysler customers that affected ILG's business, App. B-1 at 12, and no evidence of an agreement between Chrysler and the government. *Id.* at 13. Without evidence of an agreement between Chrysler and any other entity, ILG is left to rely on a "coerced conspiracy" theory, one that was first expressed as *dicta* in *Albrecht v. Herald Co.*, 390 U.S. 145, 160 n.6, *reh'g denied*, 390 U.S. 1018 (1968), in

[5]ILG also seeks review of the lower court's decision to permit the jury to continue its deliberations after granting Chrysler's motion for directed verdict. Even if there were some flaw in this procedure, it is of no significance here because the jury failed to return a verdict for either party, having been unable to reach unanimous agreement on one of the special jury interrogatories which both parties agreed was essential to ILG's prevailing on its Section 1 claim. Accordingly, there was never a jury verdict for any court either to recognize or to ignore, and submission of this issue for review is frivolous.

which the Court suggested that a plaintiff's unwilling compliance with a scheme to fix prices may provide the necessary concerted action under Section 1.[6]

Since *United States v. Colgate & Co.*, 250 U.S. 330 (1919), this Court has recognized a manufacturer's right "freely to exercise his own independent discretion as to parties with whom he will deal," to "announce in advance the circumstances under which he will refuse to sell" and "to stop dealing with a [customer] for reasons sufficient to himself . . . because he thinks such dealer is acting unfairly in trying to undermine his trade." *Id.* at 307 (citations omitted). This Court has interpreted *Colgate* as permitting a supplier to announce a resale policy and bring about adherence to it by refusing to deal with customers who do not observe that policy. *See United States v. Parke, Davis & Co.*, 362 U.S. 29, 37 (1960). Chrysler's unilateral termination of ILG when it would not comply with Chrysler's non-price export restrictions was fully consistent with *Colgate*.

ILG's assertion that it entered into a "coerced conspiracy" with Chrysler by "agreeing" to Chrysler's ex-

[6]There is serious doubt whether the "coerced conspiracy" theory survives *Monsanto* in the terminated distributor context as the basis for demonstrating a Section 1 conspiracy. Since *Monsanto* requires that plaintiff rule out the possibility of unilateral action by the manufacturer, it is difficult to understand how an alleged conspiracy involving only a manufacturer and a terminated distributor can satisfy that burden. *See Newport Components, Inc. v. NEC Home Electronics (USA), Inc.*, 671 F. Supp. 1525, 1546 (C.D. Cal. 1987). *See also H & B Equip. Co. v. International Harvester Co.*, 577 F.2d 239 (5th Cir. 1978) (distributor could not argue it agreed to be driven to financial ruin); *Carib Aviation and Marine Consultants, Ltd. v. Mitsubishi Aircraft Int'l, Inc.*, 640 F. Supp. 582, 585 n.3 (S.D. Fla. 1986) ("this Court doubts whether an unwilling co-conspirator can ever exist in a refusal to deal case").

port restrictions[7] does not take Chrysler's actions outside the protection of *Colgate* or create a conflict between the decision below and prior opinions of this Court. *Albrecht, Parke, Davis* and *Monsanto*, as well as every court of appeals decision relied on by ILG in support of its "coerced conspiracy" theory, are inapposite because each involved enforcement of a resale *price* policy, not a non-price restriction like that at issue here.[8]

The restraints at issue here simply required that a purchaser of parts from Chrysler's export group agree, as a condition of purchase, to resell the parts to overseas customers, and not to branches of the federal government or other domestic purchasers. Such restrictions are precisely the type that this Court has long characterized as vertical *non-price* restraints. *See, e.g., Business Elec. Corp.*, 485 U.S. at 739 ("[s]ometimes [under a vertical non-price restraint] a dealer must agree to sell only to certain classes of customers") (Stevens, J., dissenting); *Continental T.V. v. GTE Sylvania, Inc.*, 433 U.S. 36, 51 n.18 (1977) (territorial re-

[7]To the extent that ILG, through Mr. Henke, its president and sole shareholder, claims to have agreed to abide by Chrysler's restrictions as a basis for seeking refuge in the *dicta* of *Albrecht*, the evidence demonstrated that he subsequently ignored his purported "agreement" at every opportunity. Mr. Henke admitted that his companies sold export parts in the domestic market and that, even though a representative of his companies signed Chrysler's export addendum prohibiting domestic sales, Mr. Henke thought that it was not really "the deal" and that he could do whatever he wanted with the parts he bought for export. Specifically referring to government sales, Mr. Henke freely admitted that his companies never ceased making sales to the United States government because the government business "was our main business."

[8]In addition, in *Parke, Davis* and *Monsanto* there was evidence, not found here, that third parties had participated with the manufacturer in the decision to terminate a non-complying distributor.

striction imposed by manufacturer on distributor is vertical non-price restraint). The court of appeals below correctly held that "[t]he record disclosed that the implemented marketing policies were 'vertical' *nonprice* restraints imposed by Chrysler upon its distributors' marketing policies. . . ." App. A at 3 (emphasis added) (relying on *Business Elec. Corp.*, 485 U.S. at 729-30 & n.4. (1988)). Thus, the lower courts correctly applied the existing legal standard and rejected ILG's claims, finding that the challenged restrictions did not involve any price-related activities.

Having concluded that the vertical restrictions at issue did not involve any price-related activity, the lower courts followed strictly this Court's decisions in declining to find a coerced conspiracy between Chrysler and ILG. Indeed, a finding that such a conspiracy did exist in a manufacturer's straightforward enforcement of its non-price vertical marketing restrictions would clash with this Court's recent statutory interpretation. As the Court stated less than two years ago in *Business Electronics*, "[w]e have been solicitous to assure that the market-freeing effect of our decision in *GTE Sylvania* [regarding vertical non-price restraints] is not frustrated by related legal rules." 485 U.S. at 726. The decisions below, finding no coerced conspiracy in a manufacturer's enforcement of its non-price vertical restrictions, comport fully with this clear policy.

Even if the "coerced conspiracy" cause of action were applicable to a vertical non-price restraint, ILG could not have been part of such a conspiracy because

it never agreed to participate in the distribution system about which it complains. The trial court specifically found a lack of any evidence of an agreement between Chrysler and ILG:

> There is no evidence, however, that Chrysler ever asked the plaintiff to withdraw a bid it had already submitted, or that plaintiffs were ever asked to refrain from selling to the government parts that they had already purchased from Chrysler. . . . There is no evidence, moreover, that Chrysler ever sought, nor needed ILG's acquiescence or anyone else's acquiescence, in order to cease quoting or selling to ILG on government bids.

Id. at 12.[9] The court thus correctly held that without evidence of any agreement affecting ILG, ILG could not succeed on its Section 1 claims regarding sales to the government. *See Monsanto,* 465 U.S. at 754.

B. ILG Has Shown No Confusion With Respect To The Well-Accepted Requirement That A Sherman Act Section 1 Plaintiff Prove A Relevant Market.

ILG's claim that Chrysler conspired with it to restrain trade in the so-called "government market" was also rejected due to ILG's failure to prove that the sale of parts suitable for use in Chrysler vehicles to the United States government is a relevant market for antitrust purposes. ILG argues here that the lower courts' requirement that it prove such a market in the

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[9]*See supra* note 7. *Yentsch v. Texaco, Inc.*, 630 F.2d 46, 54 (2d Cir. 1980), on which ILG relies as support for the application of the *Albrecht* coerced conspiracy theory to vertical non-price restraints, states specifically that "actual adherence to prices . . . [is] required under the *Parke, Davis-Albrecht* formula." *See also Barnosky Oils, Inc., v. Union Oil Co.*, 665 F.2d 74 (6th Cir. 1981) (evidence of agreement required).

context of a Section 1 claim "exemplifies the widespread confusion which now exists in the appellate courts regarding the proof necessary to establish a 'rule of reason' violation of Section 1 of the Sherman Act." Pet. at 16. Contrary to ILG's assertion, no such confusion exists.

This Court has long recognized the requirement that a plaintiff prove a relevant market as a necessary component of the required showing of an effect on competition in a Section 1 case. In *International Boxing Club v. United States*, 358 U.S. 242 (1958), for example, the government had alleged a Section 1 violation with respect to the promotion, broadcasting and televising of professional boxing contests. This Court recognized the necessity of proof of a relevant market, specifically applying the "reasonable interchangeability" standard of *United States v. E.I. duPont de Nemours & Co.*, 351 U.S. 377 (1956), to a Section 1 case. More recently, in *NCAA v. Board of Regents of University of Okla.*, 468 U.S. 85 (1984), in a Section 1 context, the Court held that "the correct test for determining whether college football broadcasts constitute a separate market [is] whether there are other products that are reasonably substitutable for televised NCAA football games." *Id.* at 111 (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966); *United States v. E.I. duPont de Nemours & Co.*, 351 U.S. 377, 394-95 (1956); *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594, 612 n.31 (1953)).

ILG points to *Board of Regents of University of Okla. v. NCAA*, 707 F.2d 1147 (10th Cir. 1983), *aff'd*, 468 U.S. 85 (1984), and *Fleer Corp. v. Topps Chewing*

Gum, Inc., 658 F.2d 139 (3d Cir. 1981), *cert. denied*, 455 U.S. 1019 (1982), as presenting a conflict with the opinion of the court of appeals below. Pet. at 17-18. However, both the Tenth Circuit in *Board of Regents* and the Third Circuit in *Fleer* required a Section 1 claimant to prove a relevant market. In fact, the court in *Fleer* held that "[t]he definition of a relevant product market is a necessary element of either a section 1 or 2 violation." 658 F.2d at 148 n.13 (citing *Columbia Metal Culvert Co. v. Kaiser Aluminum & Chemical Corp.*, 579 F.2d 20, 26-27 (3d Cir.), *cert. denied*, 439 U.S. 876 (1978)). The only distinction between market evidence in a Section 1 and Section 2 case recognized by the courts in *Board of Regents* and *Fleer* is in the quantum of evidence which must be proffered to prove *market power*, not in the requirement of proof of a *relevant market*. Accordingly, the Tenth and Third Circuits are in accord with the other appellate courts and the courts below in requiring proof of a relevant market in a Section 1 case.

This Court's decision in *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447 (1986), on which ILG relies, is not to the contrary. There, the Court, while apparently not engaging in a detailed market analysis, used a more general market approach in ascertaining an effect on competition based on a finding below of "actual, sustained adverse effects on [interbrand] competition in those areas where IFD dentists predominated, viewed in light of the reality that markets for dental services tend to be relatively localized." *Id.* at 461. This finding necessarily required that a market be defined in order to assay the competitive consequences of the dentists'

behavior. Thus, far from supporting ILG's claims that no market proof is required in a Section 1 case, the Court's ruling confirms Chrysler's position that a market must be proven.

Indeed, the central point of *Continental T.V.* and *Business Elec. Corp.* is to abandon in the vertical distribution context any reliance on *per se* rules and to substitute a market-based analysis with a practical presumption of legality in the absence of price-related claims. Here, there was no evidence of any proscribed pricing behavior by Chrysler. Moreover, there was no evidence of a localized geographic market or that the vertical non-price restraints at issue had any adverse effect on interbrand competition. Therefore, affirmance of the trial court's entry of a directed verdict in Chrysler's favor on the ground that ILG failed to show an effect on competition in a relevant market was fully in accord with established precedent.[10]

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[10]ILG also claims that the trial judge erred in granting a directed verdict as a result of its failure to prove a relevant market because "the determination of a relevant market is a question of fact properly reserved to the jury." In all of the cases cited by ILG, however, the court sustained the grant of a directed verdict or judgment notwithstanding the verdict on insufficient proof of relevant market. In addition, many other courts of appeals have affirmed the withdrawal of the relevant market issue from the jury. *See RCM Supply Co., Inc. v. Hunter Douglas, Inc.*, 686 F.2d 1074, 1077 (4th Cir. 1982) (reversing jury verdict in favor of plaintiff because jury's market definition unsupported by record); *L.A. Draper & Sons v. Wheelabrator-Frye, Inc.*, 735 F.2d 414 (11th Cir. 1984); *Kaplan v. Burroughs Corp.*, 611 F.2d 286 (9th Cir. 1979), *cert. denied*, 447 U.S. 924 (1980). Given this Court's decision in *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986), it would be illogical now to restrict the use of directed verdicts to dispose of antitrust claims.

II. REVIEW BY THIS COURT IS ALSO NOT WARRANTED BECAUSE ILG HAS FAILED TO RAISE ANY ISSUES OF IMPORTANCE.

ILG further exaggerates the importance of this case by suggesting incorrectly that its claims involve government bid-rigging and abuse of procurement procedures. In particular, ILG claims that Chrysler's export restrictions, to the extent they prevent export distributors from reselling parts purchased directly from Chrysler's export group to the government, constitute an agreement to allocate bids in the sale of parts to the government.[11] Pet. at 13.

Chrysler's export restrictions, had ILG ever agreed to them, consisted solely of a requirement unilaterally imposed by Chrysler that Chrysler parts purchased directly from Chrysler would be sold only overseas. Because the products at issue below, parts suitable for use in Chrysler vehicles, were obtainable from thousands of sources other than Chrysler itself, Chrysler's termination of ILG for its failure to adhere to the restrictions had no effect whatsoever on government bidding and procurement.[12] Instead, Chrysler acted merely

[11]No court has ever found a bid-rigging agreement, which requires an agreement among or between competitors, to arise as a result of vertical restraints imposed by a supplier on its distributor. In *United States v. Koppers Co., Inc.*, 652 F.2d 290, 297 (2d Cir.), *cert. denied*, 454 U.S. 1083 (1981), in which ILG claims that a bid-rigging agreement was recognized between a supplier and a distributor, the court instead found that the defendants had agreed to the bid-rigging arrangement at issue when they were "indisputably horizontal competitors" and that their subsequent relationship as supplier/distributor did not change the initial character of their relationship.

[12]Indeed, following enactment of the Competition In Contracting Act, 10 U.S.C. § 2305, which took effect in March, 1985, Chrysler's share of government purchases fell as the government's use of lower-priced parts made by other manufacturers for Chrysler vehicles increased.

to curtail ILG's ability to free-ride on Chrysler's services by buying parts from Chrysler's export program at a price intended to compensate it for the additional costs of doing business in the export market and reselling them to the government as parts bearing Chrysler's quality assurance and warranty. Accordingly, consideration by this Court of ILG's claim against Chrysler would benefit only ILG, and the Court should deny ILG's petition for this reason as well. *See Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) (dismissing writ of certiorari as improvidently granted where issue of importance only to parties, not to public); *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955) (certiorari should not granted simply "for the benefit of particular litigants").

III. REVIEW BY THIS COURT OF THE ISSUES RAISED BY ILG WOULD NOT ALTER THE RESULT BELOW BECAUSE OTHER VALID REASONS SUPPORT THE DISMISSAL OF ILG'S CHALLENGE TO CHRYSLER'S VERTICAL, NON-PRICE RESTRICTIONS.

Review by this Court of the issues raised by ILG would not alter the result below, which was properly supported by several additional conclusions of the lower courts.

First, ILG failed to prove, as required by *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 27 n.46 (1984), that Chrysler had sufficient market power in a relevant market to violate the antitrust laws.[13] ILG in-

[13]This Court in *FTC v. Superior Court Trial Lawyers Ass'n*, 110 S.Ct. 768, 782 n.19 (1990), reaffirmed the need to prove market power in a case involving non-price restraints.

troduced no evidence of Chrysler's market share in the alleged government market, thus precluding it from proving that Chrysler had the necessary market power. Because of this failure of proof, ILG could not demonstrate that Chrysler's conduct in the alleged markets was unreasonable, and Chrysler was entitled to judgment in its favor on this ground alone. *Davis-Watkins Co. v. Service Merchandise*, 686 F.2d 1190, 1202 (6th Cir. 1982) ("Without market power, a firm cannot have an adverse effect on competition."), *cert. denied*, 466 U.S. 931 (1984).[14]

In addition, Chrysler's enforcement of its export restrictions was unquestionably reasonable because it had no effect on competition in the alleged market. ILG's claims do not involve a restriction on its ability to sell parts suitable for use in Chrysler vehicles to whomever it chooses. At most, ILG demonstrated that Chrysler restricted its ability to purchase genuine Chrysler parts from Chrysler for resale to the government, an act that does not suppress interbrand competition. *National Soc'y of Professional Eng'rs v. United States*, 435 U.S. 679, 691 (1978) (reasonableness

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[14]By contrast, Chrysler presented competent evidence at trial that the appropriate market consists of sales of all parts suitable for use in Chrysler vehicles. In that market, Chrysler's share is less than 30%. As this Court has observed, a less than 30% market share is such an insubstantial market position that it cannot confer market power. *E.g.*, *Cargill, Inc. v. Monfort, Inc.*, 479 U.S. 104, 119-20 n. 15 (1986) (market share of approximately 20% insufficient to permit a firm to engage in predatory pricing).

of restriction determined by analyzing whether restriction promotes or suppresses competition).[15]

[15]The relevant market—sale of all parts suitable for use in Chrysler vehicles—is highly competitive in two respects. First, Chrysler enjoys less than 30% of the Chrysler compatible parts market, and there are countless other companies in the aftermarket. This competition limits the ability of Chrysler to engage in supra-competitive pricing and provides ILG with the opportunity to pursue what it claims to be its objective—competing with Chrysler. In addition, the presence of interbrand competition among automobile manufacturers limits the degree to which a small reduction in intrabrand competition can adversely affect competition in the market as a whole.

Moreover, the restrictions about which ILG complains are procompetitive. These restrictions generate significant efficiencies for Chrysler and the government by eliminating free-riding on Chrysler's warranty by firms like ILG, eliminating confusion with respect to the source of parts purchased by the government and insuring that parts represented to be genuine Chrysler parts truly are. Only by enforcing these restrictions can Chrysler protect the integrity of the products it provides to the government and others and ensure that its customers receive the ancillary services they need at the most economical cost.

CONCLUSION

For all of the foregoing reasons, the issues presented do not warrant review and the Petition for Writ of Certiorari should be denied.

Respectfully submitted

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Dated: March 7, 1990